

## **REMARKS**

Independent claim 11 and claims 3, 5, 6, 9, 10, 12-16 are now pending in the application. In the Office Action mailed March 17, 2010, claims 2, 3, 5, 6, 9-13 were rejected. Independent claim 11 has been amended to clarify the nature of the claimed prosthesis. Support can be found in the specification at page 2, line 15; page 5, lines 20-24; page 9, lines 2-3; page 2, line 16; and in Fig. 22. Claims 3, 5, 6, 9, 10 have been amended to improve the consistency of claim language. Claim 2 has been canceled in favor of new claim 14. Claims 14-16 are new. No new matter has been added. Applicants request favorable consideration of this application in light of the amendments to the claims and the following remarks.

### **Claim Rejections – 35 USC 112**

#### **Claims 2, 3, 5, 6, and 9-13**

Independent claim 11 and dependent claims 2, 3, 5-6, 9-10, 12-13 were rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement because of insufficient support in the specification and drawings for the limitation of “forming an articular joint”. While Applicants do not agree with the suggestions that the specification does not support the “forming an articular joint” limitation, claim 11 has been amended to recite “a hinge core”. Support can be found in the specification in the first paragraph and in Fig. 22 and Fig. 23. No new matter has been added. Applicants respectfully request that the rejection under 35 USC 112 be withdrawn.

### **Claim Rejections – 35 USC 102(b)**

#### **Claims 2, 3, 6, 9, and 11**

Independent claim 11 and dependent claims 2, 3, 6 and 9 were rejected under 35 USC 102(b) as being anticipated by US Publication No. 2005/0085917 to Marnay et al. (“Marnay”). This rejection is respectfully traversed.

Independent claim 11, as amended, recites an intervertebral joint prosthesis configured for implantation into an intervertebral space between adjacent cervical vertebral bodies. The intervertebral space is delimited by end plates of the adjacent vertebral bodies. The prosthesis comprises a hinge core, an upper cover plate, and a lower cover plate. The hinge core has an upper surface and a lower surface. The upper cover plate has an upper surface and a lower

surface, the upper surface configured to bear against a lower endplate of an adjacent vertebral body upon implantation, and the lower surface configured to bear against the upper surface of the hinge core upon implantation. The lower cover plate has an upper surface and a lower surface, the upper surface configured to bear against the lower surface of the hinge core upon implantation, and the lower surface configured to bear against an upper endplate of an adjacent vertebral body upon implantation. The upper surface of the upper cover plate and the lower surface of the lower cover plate each having a central area and lateral edge zones. The central area is substantially planar and has an anterior edge zone, a posterior edge zone and lateral edges extending between the anterior edge and posterior edge, all relative to an orientation of the prosthesis in an implanted position, and defining an approximate trapezoidal shape. The approximate trapezoidal shape has a surface adapted for intimate connection to the end plate of the adjacent vertebral body. The lateral edge zones have an inclination that is adapted to engage a completely or partially preserved uncovertebral joint region.

This combination of features is not taught or suggested by Marnay. For example, Marnay does not disclose or suggest a central area that is substantially planar and has an anterior edge zone, a posterior edge zone and lateral edges extending between the anterior edge zone and posterior edge zone, all relative to an orientation of the prosthesis in an implanted position, and defining an approximate trapezoidal shape, wherein the approximate trapezoidal shape has a surface adapted for connection to the end plate of the adjacent vertebral body upon implantation. Accordingly, since Marnay does not disclose all of the elements of independent claim 11 and the claims depending thereon, the anticipation rejection should be withdrawn.

### **Claim Rejections – 35 USC 103**

Claims 5 and 12 were rejected under 35 USC 103(a) as being unpatentable over Marnay. Claim 10 was rejected under 35 USC 103(a) as being unpatentable over Marnay in view of US 6,083,228 to Michelson. Claim 13 was rejected under 35 USC 103(a) as being unpatentable over Marnay in view of US Publication No. 2003/0069586 to Errico et al. These rejections are all respectfully traversed because the obviousness rejections are all based upon the primary reference of Marnay which as discussed above fails to anticipate independent claim 11, from which claims 5, 10, 12 and 13 depend. The deficiencies of Marnay are not cured by the secondary references. As such, the rejections should properly be withdrawn in favor of an

indication of allowance. As indicated above, Marnay does not disclose or suggest a central area that is substantially planar and has an anterior edge zone, a posterior edge zone and lateral edges extending between the anterior edge zone and posterior edge zone, all relative to an orientation of the prosthesis in an implanted position, and defining an approximate trapezoidal shape, wherein the approximate trapezoidal shape has a surface adapted for connection to the end plate of the adjacent vertebral body upon implantation.

### **CONCLUSION**

Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this Response or the application in general, the Examiner is cordially invited to telephone the undersigned so that prosecution may be expedited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extension of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. **50-2040** referencing docket number **366US1**.

Respectfully submitted,  
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